SENATE No. 2131

The Commonwealth of Massachusetts

INTERIM REPORT
OF THE
SPECIAL COMMISSION
RELATIVE TO THE EFFECT OF THE
PRISONER FURLOUGH
PROGRAM ON THE
CITIZENS OF THE COMMONWEALTH

October 29, 1975

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Chapter 52.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Four.

RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE EFFECT OF THE PRISONER FURLOUGH PROGRAM ON THE CITIZENS OF THE COMMONWEALTH.

The Commonwealth of Massachusetts

Advance copy 1975 Acts and Resolves

PAUL GUZZI, *Secretary of the Commonwealth*

Chapter 1.

RESOLVE REVIVING AND CONTINUING CERTAIN SPECIAL COMMISSIONS.

Chapter 10.

RESOLVE REVIVING AND CONTINUING CERTAIN SPECIAL COMMISSIONS.

Resolved, That the special commissions, established by chapter seventy-one of the resolves of nineteen hundred and sixty-four, chapter one hundred and sixty-four of the resolves of nineteen hundred and sixty-seven, chapter ninety-seven of the resolves of nineteen hundred and sixty-eight, chapters fifty-seven and seventy-seven of the resolves of nineteen hundred and sixty-nine, chapters nineteen and fifty-seven of the resolves of nineteen hundred and seventy, chapters forty-four, seventy-two and seventy-eight of the resolves of nineteen hundred and seventy-one, chapters six, forty, forty-three, fifty-seven and eighty-six of the resolves of nineteen hundred and seventy-two, chapters eight, twelve, eighteen, nineteen, sixty-three, seventy-one, one hundred and five, one hundred and sixteen, one hundred and twenty-two, one hundred and twenty-six, one hundred and thirty, one hundred and thirty-six, one hundred and forty-one and one hundred and fifty-seven of the resolves of nineteen hundred and seventy-three, and chapters thirty-one, thirty-seven, thirty-eight, forty-three, forty-nine, fifty, fifty-two, fifty-nine, seventy-six, seventy-seven, seventy-nine, eighty-eight and ninety of the resolves of nineteen hundred and seventy-four are hereby revived and continued.

Approved May 21, 1975.

MEMBERSHIP

Appointed by Senate President

Senator Arthur J. Lewis, Jr., Chairman
Senator Stephen J. McGrail
Senator David H. Locke

Appointed by Speaker of the House

Rep. Peter Y. Flynn, Chairman
Rep. H. Thomas Colo
Rep. James S. Conway
Rep. Edward J. Early, Jr.
Rep. Jonathan L. Healy

Appointed by former Governor Sargent

Mr. Robert Thomas
Mr. Bruce C. Geary
Professor Lloyd L. Weinreb

We, the majority of the members of the Special Commission formed by the Legislature to Study the Effects of the Prisoner Furlough Program on the Citizens of this Commonwealth, believe that the Legislature should favorably accept the Recommendations contained in this interim report.

SEN. ARTHUR J. LEWIS, JR.
DAVID H. LOCKE
STEPHEN McGRAIL
REP. PETER Y. FLYNN
JAMES S. CONWAY
EDWARD J. EARLY, JR.

DATED: October 16, 1975

Summary

The mandate given to this commission by the General Court was to investigate and study the effects of the prisoner furlough program on all of the citizens of the Commonwealth. This study, consistent with the intent of the Legislature, has dwelled on those associated directly with the correctional system and the general citizenry.

It is the latter group that this program has failed so greatly.

To date, the commission has found no benefits, singly or in toto, attributable to the furlough program that can justify, for the public's sake, the continuance of a practice that allows convicted criminals to walk the streets, devoid of restraints, and free to commit again crimes against their fellow man.

The record shows that if it were not for this program at least five Massachusetts citizens would be alive today and many others would have been spared the suffering and expense of being victims of crime.

The above facts are the short run effects of a program that was implemented too quickly and much too extensively.

The long range effect sought by the Legislature when it passed Chapter 777 of the Acts of 1972 was to reduce the recidivism rate by making it possible, through this and other programs, for the offender to make the transition back to society in such a way that he would not have to again turn to crime.

The extent to which this goal has been achieved can not be determined in these first thirty-four months of this program.

In the course of its study and investigation this commission has determined that the initial and present system of granting furloughs has resulted in the administration of a program that's means will in no way justify the Legislature's desired end.

It is for these reasons that we make this interim report and recommend to the Legislature specific additions to Section 90A of Chapter 127 of the General Laws of the Commonwealth.

Introduction

The prisoner furlough program in the Commonwealth of Massachusetts began on November, 6, 1972. The reaction of concerned citizens was immediate and constant. There were and continue to be problems with the law which allows this program and in the administration of the furlough system.

In 1974 legislation was passed by the General Court creating a special commission to investigate and study the effects of the furlough program on the citizens of the Commonwealth.

The concern and feelings of those not imprisoned were made known. The commission then felt it necessary to hear from those most involved with the furlough program, the correctional staff and inmates.

It is apparent from their testimony that the furlough system per se appears beneficial to all members of the prison colony, though, in reality, the benefits may not be those intended by the Legislature in 1972.

It is equally apparent from the commission's hearings and study that the merits of this program remain questionable, if not doubtful, in their advantage to the general public. In the short run the Commonwealth attains quieter prisons. The intended long term advantages of rehabilitation and reduced recidivism can not yet be determined.

Within the prison facilities correctional officials and correctional officers report a marked improvement in inmate attitude and manner.

The prisoners benefiting from furloughs praise the Legislature for establishing this program. Even those who have not received a furlough speak highly of a system that gives them some hope of venturing outside the prison walls, even if only for a brief time. Inmates have testified that others, returning successfully from furloughs have spurred them on to do what was necessary to obtain their own furlough.

Yet for all the positive statements made the furlough system as constituted was termed 'lacking' by officials, officers and inmates.

There is a prevalent feeling that the existing loopholes could prove disastrous to the continued existence of this program. The inmates are ever aware that their image and reputation can be affected by the performance of a single prisoner on furlough.

Inmates are adamant in their contention that at present they might better punish one of their number, who takes wrongful advantage of the system they so cherish, than our courts do.

All have agreed that the system, flawed as presently written, should be continued since it is now part of the general reform and correctional lore.

It is the considered judgement of this Commission that a greater number of concerned citizens would agree that it is logical to allow a prisoner, who will eventually return to society, and is responsible and working toward rehabilitation, to reintegrate gradually into the community to which he will return.

Yet, this Commission is fully aware that its recommendations will be condemned by those who find it inconceivable that such a program even exists. For others this report will be deemed unnecessary, for in their eyes this program is highly successful and, if anything, should be broadened.

It is the firm belief of this Commission though that since there is, at present, within and an integral part of our penological system the practice of parole the chief purpose, of which is "to help individuals reintegrate into society as constructive individuals as soon as they are able"[1], that an *additional system* of reintegration, granting furloughs, must be considered as being in the exceptional privilege category.

As such it is demanded of the Department of Corrections that they continuously go beyond their own guidelines, beyond these recommendations even if they should become law, to such an extent that all steps are taken to ensure that only responsible, exceptional inmates partake in this program.

This Commission is fully aware and it should be understood by all that this program is a gamble, that each furlough is a gamble. The inmates are human and humans, even those with the best of intentions, sometimes fail.

However, it is the conclusion of this Commission that steps *can* and *must* be taken by the Legislature to tighten this program by laws, to lessen the chance that a future Commissioner might greatly abuse this program, to improve the opportunity for this program to be conducted safely for all citizens of the Commonwealth.

It is to the above that we address our recommendations.

Chapter 777 of the Acts of 1972

Chapter 777 of the Acts of 1972, the state's Correctional Reform Act, was enacted in order to achieve major reform in the Massachusetts prison system.

1 Chief Justice Burger in Morrissey v. Brewer, 408, U.S. 471 (1972)

This measure provided the Commissioner of Correction with both the mandate and the authority to develop and implement major changes in several areas of correction, including the establishment of minimum standards for state and county correctional institutions, a system of classification of inmates, work and education release programs, community release programs and a furlough program.

At the writing of this report, it seems safe to say that the most celebrated and controversial of the programs is the last mentioned above, furlough. To many it has become, however erroneously, synonomous with the act itself. Falsely, it embodies in the minds of the uninitiated, Chapter 777, yet for all the attention given it, the furlough program is one of the least defined Sections of Chapter 777.

Whereas the laws governing the work and education release programs, written as Sections 48, 49 and 49A of Chapter 127 of the Massachusetts General Laws, state specifically the time eligibility, composition of the screening committee, type inmates that may be considered for programs, and the mandatory sentence to be given for escapees, Section 90A of Chapter 127 of the General Laws, which is the authority to establish a furlough program, specified none of the above. (see exhibit 1).

It is this very vagueness in the law that has allowed former Commissioner Boone and now Commissioner Hall to issue over 21,000 furloughs and to promulgate rules and regulations for this program that are consistent perhaps with their own social philosophies but not with the original intent of the Legislature.

The result is a program that allows upwards of 20% (see exhibit 2) of our convicted offenders to be released each month on furlough. The hearing at M.C.I. Bridgewater last December 17th further revealed that officials there expected 33⅓% of their inmates to receive furloughs for Christmas.

This is possible since the power to promulgate their own guidelines has allowed both commissioners to grant eligibility for furloughs to many inmates immediately upon their committance to a correctional facility.

Many other prisoners have become eligible, regardless of their crime, after serving only an incredibly lenient period from 90 days under former Commissioner Boone to a minimal number of months under the regulations set by Commissioner Hall.

This looseness in the law provides the possibility that at another time a new commissioner, one more lenient than his predecessors, might set rules and regulations that would make a mockery of the judicial process.

For these regulations, drawn up solely within the Correction Department, have the effect of law once they are filed with the Secretary of State.

It was reported to this Commission by officials of Bridgewater that at one time they attempted to restrict the eligibility of certain types of offenders because they felt the requirements were too lenient. Their action was quickly negated by the Department of Correction's legal section.

Testimony given before this Commission at both Norfolk and Bridgewater revealed that the loose interpretation of Section 90A by both commissioners has resulted in many furloughs being requested mainly to build up a record that will be used to justify their eligibility for admission to certain programs, for consideration for parole and even commutation of sentence.

It is clearly evident that in these cases this program has been regulated beyond and outside of the original intent of the legislation.

Concern over these deficiencies in the law and the inconsistency in the administrations of this program has resulted in private citizens, judges, legislators, police, correctional officers, law enforcement agencies and other law officials as well as inmates of the facilities to express dissatisfaction with the implementation of certain aspects of this program.

In several cases their disenchantment has solidified in legislation being filed to amend Section 90A of Chapter 127 of the General Laws. To date no changes have been made since its passage in 1972.

This issue is of such critical concern to the citizens of the Commonwealth that the Legislature must act now to specify the law for the proper operation of this program.

The furlough program was created by the Legislature. Its responsibilities to it have not ended.

It is the finding of this Commission that the General Court should, at this time, amend Section 90A of Chapter 127 with the aim of making that section as specific in nature and content as it has done with other sections establishing programs for the

committed offender.

Excerpts from Present Regulations

Presently the furlough program is being operated according to the set of rules and regulations, promulgated by Commissioner Hall, which became effective in May of this year.

Prior to these guidelines the program was operated within the rules and regulations filed in September 1973.

A furlough may be authorized and granted for only these purposes, stated in Section 18 of Chapter 777 of the Acts of 1972. (a) to attend the funeral of a relative; (b) to visit a critically ill relative; (c) to obtain medical, psychiatric, psychological or other social services when adequate services are not available at the facility and cannot be obtained by temporary placement in a hospital under 117, 117A and 118 of c. 127; (d) to contact prospective employers; (e) to secure a suitable residence for use upon release on parole or discharge; (f) for any other reason consistent with the reintegration of a committed offender into the community. For the purposes of this section, the word "relative" shall mean the committed offender's father, mother, child, brother, sister, husband or wife and if a grandparent, uncle, aunt or foster parent acted as parent in rearing such committed offender, it shall also mean grandparent, uncle, aunt or foster parent.

The total time allowed out on furlough, which is not to exceed 14 days during any twelve month period, nor more than seven days at any one time, was also stated in the Acts of 1972.

Inmates become eligible for furlough according to the following schedule as set up by Commissioner Hall and the Department of Corrections.

8.1(b)(2) A resident shall be eligible to be considered for a furlough under the following conditions: (a) a resident serving life sentences for murder in the first degree or a sentence of death shall be required to serve five years from the effective date of sentence, except for emergency furloughs under escort; (b) a resident serving life sentences except those serving sentences for murder in the first degree or a sentence of death shall be required to serve three years from the effective date of sentence, except for emergency furloughs under escort; (c) a resident who

upon initial commitment to the care and custody of the department is within eighteen months of parole eligibility shall be eligible immediately for furlough; and (d) all other residents shall be required to serve twenty percent of the time between the effective date of sentence and their parole eligibility date, but no more than three years, except for emergency furloughs under escort (see exhibit 6). Residents who have successfully completed a furlough without an escort or residents whose applications for initial furloughs without an escort have been approved by the superintendent, or in the case of special offenders, the commissioner, as of the effective date of these regulations shall continue to be eligible to receive a furlough under the conditions set forth in 8.1(a)(1) of D.O. 4670.1, *Furloughs, Rules and Regulations,* August, 1973.

The process provided by the regulations for obtaining a furlough begins with an inmate filing an application with the Furlough Coordinator who is appointed at each facility by that superintendent.

After receiving the application the Furlough Coordinator then prepares an authorization sheet and contacts and obtains all information reports, evaluations, recommendations and other data needed by the Furlough Committee.

All material is then sent before this Furlough or Institutional Classification Committee which reviews the application and all other relevant material relating thereto for completeness and interviewing the applicant.

The Committee then votes and informs, in writing, the superintendent, furlough coordinator and the inmate of any recommendation with reasons for approval, disapproval or deferral of the furlough application.

All material then goes before the superintendent and Commissioner for their review and approval.

A new provision of these latest guidelines allows for an inmate to receive certification from the commissioner for one furlough year. An inmate who has been certified may have his furlough approved and granted by the superintendent without being approved each time by the Commissioner.

The following provisions included in the rules and regulations but are not written into the law and may be subject to change by a future Commissioner.

11.3 *Notification of Police*

11.3(a) At least one week prior to the release of a resident on an approved furlough, the furlough coordinator shall notify the chief of police of the community which the resident designates as his destination and the department of public safety, 1010 Commonwealth Avenue, Boston, Massachusetts, by means of the designated notification form.

11.3(b) In case of emergency furloughs, emergency furloughs under escort, or in any other case where time does not permit notification shall be made by telephone and followed by written notice.

11.3(c) Notification to a district attorney of the commonwealth or a law enforcement agency other than those set forth in 11.3(a) of these regulations, of the approval of a furlough for a particular resident may be provided only after a request, in writing, from such district attorney or law enforcement agency has been received and approved by the commissioner. When information is provided to a district attorney or law enforcement agency under this section, a record, in writing, including the date, the name and address of the individual or agency requesting this information, and the reason for requesting such information shall be maintained. The Commissioner or his designee shall maintain a list of the name or names of the resident and the agency requesting the information.

Presently furlough escapees are to be prosecuted, under Chapter 268 Section 16 of the Massachusetts General Laws, which governs all escapees from correctional institutions.

Commissioner Hall's regulations provide for the following actions upon an escape.

11.4 *Abuse of Furlough Privilege*

11.4(a) Failure of the resident to adhere to the conditions of his furlough shall be deemed an abuse of the furlough privilege, and the resident may be subject to disciplinary action or criminal prosecution and such abuse shall be considered in future furlough requests.

11.4(b) Failure of the resident to return to the state correctional facility at his designated time shall automati-

cally result in the filing of a disciplinary report for being out of place, regardless of prior notification to the facility by the resident of his reasons for being late. Current departmental procedures for processing disciplinary reports shall be followed. It shall be the responsibility of the shift commander to insure that the reporting officer has prepared his disciplinary report prior to the termination of the shift.

11.4(c) Failure of a resident to return to the state correctional facility within two hours of his designated time of return shall be considered an escapee, regardless of prior notification to the facility by the resident of his reasons for being late. The superintendent or his designee shall notify, fortwith, appropriate law enforcement officials of the escape (see D.O. 4670.IA, Enclosure (1)).

Statistical Reports

As an unfunded and non-staffed Commission, this body was unable to carry out any separate or extensive investigation of the Department of Correction's furlough reporting efficiency.

Therefore the statistics and reports cited are produced by the Correction Department.

It is the opinion of this Commission that in the end this "considered deficiency" will be an advantage for the General Court.

There can be no arguments on differences of figures or reporting techniques. The statistics are there to be interpreted by each individual.

For some, the figures will spell success, while others will see the great problems that this Commission has been made aware of in more detail.

– 318 escapes (see Exhibit 3)
– 231 escapees who did not return voluntarily within twenty-four hours (see Exhibit 3)
– 54 escapees still at large (see Exhibit 3)
– crimes committed by offenders released on furlough (see Exhibit 4)
– minimal sentences imposed for escapees (see Exhibit 5)

This Commission has determined that as in any statistical reporting system there will be mistakes[1]. In the end we must accept these figures as the only and thus the best available.

One fact that should be pointed out for consideration is that the Department reports its escape percentages out of the total number of furloughs granted, not by the number of individuals furloughed.

If this latter method were to be used, the percentage rate for successful furloughs would be lower than the 98.5% so widely reported.

An example of the differences that would result can clearly be seen in the figures for first degree murderers quoted in the Department's Second Report on the Massachusetts Furlough Experience which was released in September. The Department's table shows:

	No. of Furloughs	*No. of Escapes*	*Rate*
First Degree Murder	560	7	1.3%

The Commission would show that based on the number of individuals furloughed (taken from the same report) the table would read:

	Individuals Furloughed	*Escapes*	*Rate*
First Degree Murder	67	7	10.4%

Commission members have become acutely aware of the fact that in no way do the numbers tell the real story of the successes and failures especially the failures of this program.

One must remember that the program in question is a privileged system that involves convicted offenders, who have already wronged society and in several cases have used this program, championed as humane and progressive, to again destroy people and property, in short, to create more victims of crime and violence.

[1]Prior to the public hearing held on April 17, 1975, at the State House, Representative Peter Flynn in a limited phone survey of correctional facilities determined that four furloughed escapees who were still at large were not listed in the Department's monthly statistical report.

The Commission's files include numerous newspaper reports that tell much more than the mere numerical fact that an inmate was granted a furlough and did or did not return on time.

During the course of this investigation and study the question most asked by the general public, those not associated in any way with prisons or prisoners, was "but who speaks for the victims!"

Work of the Commission

The Special Commission to Study the Prisoner Furlough Program was established by Chapter 52 of the Resolves of 1974 and continued by Chapters 1 and 10 of the Resolves of 1975.

Its purpose is to conduct a study and investigation relative to the effect of the furlough program, which began in this state in November of 1972, on the citizens of the Commonwealth.

The Resolve which created the Commission was passed on July 3, 1974. It called for a membership of eleven, three to be named by the Senate President, five by the Speaker of the House of Representatives and the three remaining positions were to be filled by the appointees of the Governor.

The Commission had to wait until mid-December for former Governor Sargent to make his three appointments.

During this time, the co-chairmen worked to acquire and research all available information pertinent to this program. This effort included the obtaining and analyzing of all reports, evaluations and statistics compiled by the Department of Correction. Letters were sent to several states and the federal government, seeking all existing evaluations and reports on their furlough experience.

Though this has been an ongoing phase of the investigation and study, it was the opinion of the co-chairmen that the Commission should get first-hand testimony and knowledge of the program by visiting some of the correctional facilities and holding a public hearing for the general public and law enforcement agencies.

In the past several months, this Commission has conducted on site hearings on the furlough program at both M.C.I. Norfolk and M.C.I. Bridgewater. Spokesmen at these hearings included superintendents, correctional officers, furlough committee members and inmates.

A hearing was held in the State House in April for the general public, law enforcement officials and all others willing to attend. Over thirty notices of the hearing were sent out to state officials, law enforcement agencies, correctional facilities and prisoner and prisoner rights groups. Those who chose to speak included Corrections' Commissioner Frank Hall, Sheriff Bowes of Barnstable County and representatives from the Massachusetts Patrolmen's Association, the Public Safety Department, a correctional officer, an inmate's wife, a former inmate and several inmates out on furlough.

The Commission was represented by its co-chairmen at two hearings, one held on Good Friday and the other, only at the request of this Commission, held by the Department of Corrections on the issuance of their new rules and regulations.

In addition to these hearings, the Commission has received information in writing and by telephone from concerned citizens, inmates and law enforcement officials.

Information from all of these sources was reviewed and considered in the formation of this report and recommendations.

Outline of Recommended Legislation and Supporting Reasons

1. *That at least two correctional officers sit on a five member furlough committee.*
   - Section 90A of Chapter 127 of the General Laws does not stipulate the makeup of the committee. Possibility exists that through regulations, correctional officers could be eliminated.
   - All correctional officials, officers and the inmates testified that the correctional officers know the prisoners best.
   - Section 7.5 of previous rules and regulations required at least two officers on the furlough committee.
   - Section 13 of the same Chapter 777 of 1972 requires for the work and education release programs at least two officers on the screening committee.
   - Section 7.9 of the present rules and regulations states only that at least one officer sit on the committee.

Throughout the hearings and deliberations of the Commission, one point that was made time and time again was that those who know the prisoners best are the correctional officers.

Correctional officials, officers and inmates agree on this point.

That this fact is accepted is indicated by the very wording used by the Legislature in Chapter 777 regarding the Work and Education Release Program. Section 13 of that Act (now 49A of Chapter 127) states that "The commissioner shall establish, in each state correctional facility, one or more committees made up of representatives from all segments of the Department of Correction's staff, especially correction officers. Said committees shall take the form of teams of five correctional staff members, appointed by the superintendent of the correctional facility, at least two of whom shall be correctional officers."

That section of Chapter 777 which deals with furloughs states nothing to this effect. Yet when the first rules and regulations promulgated by the Department of Correction (guidelines the Commission has criticized on many other points) were filed in September of 1973, Section 7.5 of Definitions stated "Furlough Committee – A committee composed of at least five members designated by the superintendent at least two of whom shall be correction officers."

But now, again showing the extent to which a new commissioner can redirect the program, the rules and regulations under Commissioner Hall, filed May 19, 1975, state in Definition 7.9 "Furlough Committee – A classification committee composed of no less than three nor more than five institutional staff members designated by the superintendent, at least one of whom shall be a correctional officer...."

This Commission contends that if a consistent program is sought, the Legislature should make certain stipulations in the law.

2. *That a mandatory, from and after sentence of not less than three and not more than ten years and forfeiture of good time deductions, be imposed on any furlough escapee who fails to return to the institution within six hours.*

- Section 90A of Chapter 127 does not state action to be taken in regard to escapes from furlough.
- Inmates and correctional officials have requested such legislation with the firm belief it will help.
- Section 13 of Chapter 777 of 1972 requires a mandatory sentence for work and education release escapees.
- Section 16 of Chapter 268 of the General Laws, on escapes,

is not being carried out.

- Record shows that of the 311 escapes til June, 1975:
  - only 20% received a new sentence
  - only 13.8% received a from and after sentence
  - that over 93% of from and after sentences were for six months or less.

This recommendation comes from within the correctional system itself. Superintendents, officials, officers and inmates alike requested, and the Commission concurs, that a mandatory on and after sentence be imposed on an inmate who escapes while on furlough.

Correctional officials and inmates spoke before this Commission of the problems they encounter when an escapee, who jeopardized the program, received a minimal or concurrent sentence for his failure to return.

The prisoners at both Norfolk and Bridgewater were adamant in their contention that the courts should penalize such individuals. They testified that though they have their own system of punishment more proper legal action must be taken.

Statistics from the Department of Correction clearly indicate that escapees are not being heavily sentenced and that Chapter 268, Section 16 is not being carried out. The result is that these minimal penalties do not act as a deterrent to escape (see Exhibit 5).

Presently there is nothing in Section 90A that relates to escapes from furlough. Yet in Section 13 of Chapter 777 of 1972 a mandatory from and after sentence is called for in the escape of an inmate participating in the work and education release programs.

Thus the Commission recommends that a similar provision be written into the statute that governs the furlough program.

In addition, this Commission recommends that the further regulations on abuse of the furlough privilege be written into law. Such that:

Failure of the resident to return to the state correctional facility at his designated time shall automatically result in the filing of a disciplinary report for being out of place, regardless of prior notification to the facility by the resident of his reasons for being late. Current departmental procedures for processing disciplinary reports shall be followed.

Failure of a resident to return to the state correctional facility within two hours of his designated time of return shall be considered an escape, regardless of prior notification to the facility by the resident of his reasons for being late. The superintendent or his designee shall notify, forthwith, appropriate law enforcement officials of the escape. The escapee shall be subject to all disciplinary and judicial action.

After six hours, and upon conviction, the mandatory sentence shall be imposed.

3. *That it be mandatory for an inmate to be an active, regular participant in a program in order to be considered for a furlough.*

- Section 90A of Chapter 127 and the present rules and regulations do not strictly require participation in order to be considered for a furlough.
- Section 129D of Chapter 127 of the General Laws allows deductions from sentence for involvement in a program.
- If an inmate is not willing to work to help himself and to get out earlier, he should not be considered for furlough.
- Section 13 of Chapter 777 of 1972 states only "responsible and deserving" inmates eligible for work and education release programs – furlough program should be just as demanding.
- Section 8.2 (b) (1) in previous regulations required involvement in a program in order to be eligible for certain furloughs.

It is the belief of the Commission that if an inmate is intent on rehabilitation and trying to help himself he should be active in his work assignment from the superintendent or in a program approved by the commissioner.

Under Section 129D of Chapter 127 of the General Laws, an inmate may, for satisfactory conduct in a variety of programs, receive from the commissioner deductions from his sentence.

The Commission's recommendation is that if an inmate is not willing to work to help himself and to attain these deductions, he should not be considered for the furlough program.

Additionally, the work and education release legislation (Section 13 of Chapter 777 of the Acts of 1972) clearly states that an inmate to be eligible "shall first demonstrate that he is responsible and deserving of these opportunities."

The furlough program should be no less demanding.

The initial department guidelines separated regular furloughs into two categories – quarterly and earned. The Commission strongly rejects the past issuance of quarterly furloughs, but appreciates the fact that no overnight furloughs would be granted unless the inmate was "involved in programs in the correctional facility." (1973, 8.2)b) (1))

The current regulations only state that "In considering responsibility the past and present conduct of the resident shall be reviewed, including his prior furlough history, if any, program and activity participation..." (1975, 8.2(a) (1))

It is the considered judgement of this Commission that, in addition to the other requirements and considerations necessary for a furlough, Section 90A of 127 should state the recommended provision.

The alternative is a possible return to the quarterly furlough system of 1972, 1973 and 1974, which clearly stated that "A resident shall not have to participate in programs in the correctional facility to receive a quarterly furlough." (1973, 8.2(a) (4))

4. *Requiring notification of certain police and law enforcement agencies and allowing for their objections prior to release of inmate on furlough.*

- Section 90A of Chapter 127 does not require any notification and it should be stipulated in the law that notification be given and to whom.
- Section 133A of Chapter 127, concerning parole of certain offenders, involves notification of these very same people.
- Some agencies are already notified through rules and regulations.
- The recommended process calls only for notification and does not require an answer. Only if an objection is made will full process be used.
- Law enforcement officials because of their insights and knowledge testified that they want to be and should be part of this program.
- A special correctional force, the Security Management Team, recently implemented by Commissioner Hall, checks many of these very same sources. Previous commissioner did not and next commissioner may not use this force.

During the investigation it became apparent that all decisions on the granting of furloughs would be based on the offender's record as an inmate. It is the recommendation of this Commission that further steps be taken to gain information, from people outside of the institution especially law enforcement officials who know how the inmate has acted previously and may have information as to what situations or people are presently in a position to possibly cause an offender to have an unsuccessful furlough.

The Department of Correction, through its rules and regulations, has implied that it is beneficial to the inmate and community that local police officials be notified that an offender has signified their community as his destination.

It is the belief of this Commission that since the offender is not limited to this specific location, the Department of Correction should go further than notifying just the local police and Department of Safety to the extent that several additional agencies be notified and provided with a process to supply any information concerning the furlough that they may wish to present.

The Commission's recommendation is that these agencies and individuals be notified fourteen days prior to the furlough, except for emergency furloughs, and if an objection is received five or more days prior to the release date, a meeting will be held on that objection.

The Commission wishes to make it clear that the process calls only for the notifying of these officials; the furlough has already been approved at the institutional level and is not contingent on receiving replies of clearance from each of these agencies. It is only if there is an objection that this process could force a delay or prevent a furlough.

The additional agencies designated to be notified are those that may have had contact or information concerning the inmate and his offense.

The current process calls for notification (11.3a) of the chief of police of the community which the resident designates as his destination and the department of public safety. We have added to these the committing justice, the criminal division of the attorney general's office, the superintendent of the police division of the M.D.C., the district attorney of the county where the

offense occurred and the chief of police of the city or town in which the furloughed prisoner's offense occurred.

The Commission must point out again that in describing the furlough system most correctional officials referred to it as a "gamble." It is the opinion of this Commission that each gamble, and each furlough is a serious gamble, should be made with all pertinent information available. The agencies that this Commission recommends to be notified may help supply it.

On other important decisions in the correctional process, we look to these agencies for advice.

In considering parole of certain prisoners it is required by Section 133A of Chapter 127 that the parole board "shall at least thirty days before such hearing notify in writing the attorney general, the district attorney in whose district sentence was imposed and the chief of police or head of the organized police department of the municipality in which the crime was committed."

These law enforcement officials have testified that they want to and feel they should be involved with this program.

The committing justice, or chief justice of the superior court, has also become acquainted with the offender and his offense. It was this justice, after considering all information, who decided through his sentence how long the individual should be separated from society. It is the firm belief of this Commission that he should, if he chooses, have input into a decision that will again put this offender on the streets even before, in most cases, he has served enough time for parole.

The need to obtain more information before granting a furlough has been recognized by the Department of Correction and Commissioner Hall.

Within the past year, Commissioner Hall has initiated a special force to investigate the destination, background, associates as well as the community and law enforcement officials' feelings on the furlough applicant.

The Commission has been told that there have been cases where this force, the Security Management Team, has found sufficient information from the very sources we recommend be notified to advise rejection of the furlough application.

This system of pre-furlough investigation was initiated by Commissioner Hall. The previous commissioner did not have

and the next commissioner may not use this force. The possibility exists that even now this security team could be discontinued.

Section 90A of Chapter 127 does not require any notification and the Commission recommends that the law stipulate that notification be given and to whom.

5. *That offenders become eligible to apply for a furlough according to a set time schedule that takes into consideration existing laws, the crime or crimes, prior commitments and the inmates eligibility for parole.*

- Section 90A of Chapter 127 does not specify time schedule and the result has been a wide range of eligibility through the regulations of commissioners.
- Section 13 of Chapter 777 of 1972 requires and states the time eligibility for work and education release programs.
- Both commissioners have allowed immediate eligibility to those within eighteen months of parole – result, an offender committed to M.C.I. Concord, with prior commitments, for a term of six years or more, and less than twelve years, becomes eligible immediately upon incarceration.
- Section 8.1(a)(1) of previous rules and regulations required only 90 days in prison, regardless of crime or crimes, for eligibility.
- Section 8.1 (b) (2) of present rules and regulations (see Page 13) doesn't go far enough.
- Once the commissioner sets regulations they are tested as law. The Legislature should stipulate what the law should be.
- The entire judicial process is weighted according to the type and seriousness of the crime.
- Some inmates are presently not eligible to be released back to society and others have on their own repeatedly jeopardized their family and community ties. They should be restricted or ineligible for participation in this program.

As presently written in Section 90A of Chapter 127 of the General Laws, all the power and authority to set regulations and to grant furloughs rests solely with the Commissioner. He "may extend the limits of the place of confinement" of an offender and he may do so according to any time schedule he decides to promulgate.

During the hearing at M.C.I. Bridgewater, the superintendent

testified that he and other institutional officials had some input into the initial drafts of the first furlough rules and regulations.

These recommendations included provisions that certain offenders be required to serve a designated number of years before becoming eligible to apply for a furlough.

The superintendent testified that in the end their suggestions and recommendations were not used and the department used a much more lenient set of regulations.

The only time stipulation required by these first regulations was that an inmate must serve merely ninety days of his sentence, regardless of the crime or length of sentence, before being able to apply for a furlough.

This minimal time requirement did not affect those offenders who upon committal to a facility were within eighteen months of parole. These inmates were allowed through the regulations to submit a furlough application immediately.

At M.C.I. Bridgewater this Commission was told that officials there attempted, through institutional policy, to restrict the eligibility of certain types of offenders because they felt the former commissioner's requirements were too lenient. They felt they were not able to know the inmate well enough in that short a period of time to make such a major decision.

In the end their restrictions were negated by the Department of Correction's legal section.

As can be seen, once the commissioner sets these rules and regulations they are treated as law until the next commissioner decides to change them.

The broad power to establish rules and regulations is given to each commissioner when they take office. Accordingly after a little over a year in office, Commissioner Hall filed his own set of rules and regulations.

These guidelines, as shown on Page 13, do require a number of years to be served by offenders sentenced to life; other offenders are required to serve 20% of the time until they are eligible for parole. (See Exhibit 6).

The regulation that allows all offenders who are within eighteen months of parole eligibility to be able to apply for a furlough immediately upon commitment still remains.

After reviewing and analyzing other laws and requirements that govern our correctional system, this Commission finds

these past and present regulations inconsistent and far too lenient.

The following example shows how generous these regulations have been:

An offender with prior commitments, sentenced to M.C.I. Concord for a term of six years or more and less than twelve years, would become eligible for parole in eighteen months. The regulations now in effect allow him to apply for a furlough immediately upon his commitment to that facility.

The same situation exists for an offender, first offense, who is sentenced to M.C.I. Concord for a term of twelve years or more and less than eighteen years to be eligible for parole in eighteen months and thus a furlough immediately upon commitment.

The remaining requirements of the regulations promulgated by Commissioner Hall are a marked improvement over the guidelines used by former Commissioner Boone.

Yet, this Commission feels that these provisions have not gone far enough particularly since they are tied to a parole system that is of itself quite lenient. (See Exhibit 7)

This Commission agrees that it is logical and beneficial to look to parole when considering eligibility for furlough.

The recommendation of this body though is that this time schedule go beyond just the time aspect of parole and take into consideration several other concepts and laws already incorporated in our judicial, correctional and parole systems.

The Commission submits the following time eligibility schedule that is consistent with existing laws and that takes into account the crime committed, the offender's prior commitments and parole eligibility.

5a. *First-time offenders of minor, non-violent crimes; that is, any violation for which if held under a sentence containing a minimum sentence the offender would be eligible to receive a parole after serving one-third of that minimum sentence, shall be required to serve twenty percent (20%) of the time required to be eligible for parole before becoming eligible to apply for a furlough.*

It is the belief of this Commission that all offenders should serve some portion of their sentence (except for emergency furloughs under escort) before becoming eligible to apply for a furlough. Therefore, this Commission does not recommend that

the immediate eligibility regulation for inmates within eighteen months of parole be written into law.

The Commission's recommendation does allow for the first-time offender, incarcerated for certain minor crimes, to be eligible for a furlough after serving some, though a minimal amount, of his required sentence.

Most of the offenders under this category have fallen within the eighteen month to parole, immediate eligibility regulation.

The 20% requirement is that figure which is presently used by the Department of Correction for all sentences, except those committed for a life sentence, that do not fall within the eighteen month parole regulation.

5b. *First-time offenders of serious, violent crimes, violations for Sections 13, 13B, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 22, 22A, 23, 24, 25, 26 of Chapter 265 or Sections 17, 34, 35, or 35A of Chapter 272, and including conviction of possession of controlled substances with intent to sell, or any violation for which if held under a sentence containing a minimum sentence the offender would be eligible to receive a parole after serving two-thirds of that minimum sentence, shall be required to serve fifty percent (50%) of the time required to be eligible for parole before becoming eligible to apply for a furlough.*

These criminal violations are considered so serious by our judicial process that conviction for any section usually results in sentences to be served at the State prison and requires the inmate to serve two-thirds of his minimum sentence before becoming eligible for parole consideration.

Under the present commissioner's regulations, these offenders become eligible to apply for a furlough after 20% of the time required until they are eligible for parole consideration.

The recommendation of serving 50% of the time till eligible for parole takes into consideration the seriousness of the crime and the fact that the parole laws demand this offender serve 33⅓% more time than those committed for a minor offense.

The Commission's recommendation is to increase the 20% required for minor offenses by 30% for these serious crimes.

The following case shows the effect that this recommendation would have. A prisoner under a sentence of five to ten years for armed robbery would be eligible for parole after serving forty

months. Present regulations would allow this offender to be eligible for a furlough after eight months of incarceration.

The Commission's recommendation would require this inmate to serve 20 months before being able to apply for a furlough.

5c. *Repeat offenders, those with a prior commitment to a correctional institution or house of correction, must be within four (4) months of parole eligibility in order to be eligible for a furlough.*

These offenders have in the past served time and been released. At that stage they had every occasion to restore and use to the fullest the very relations and opportunities that a furlough seeks to provide.

It was only through his own actions of again offending society that this criminal jeopardized or lost these relations or opportunities.

This Commission recommends that this offender be allowed escorted furloughs for the first three reasons stated under law (Chapter 127, Section 90A): (a) to attend the funeral of a relative, (b) to visit a critically ill relative, (c) to obtain medical or social services as the need arises and the Department of Correction grants; this offender should be ineligible, based on his own actions, for the last three allowed categories, (d) to contact prospective employers, (e) to secure a suitable residence and (f) for reasons consistent with his reintegration into the community, until he is within four months of parole eligibility.

Under present regulations an armed robber, with prior commitments, sentenced to Walpole for four to ten years, would be eligible for a furlough after serving six and one-half months, regardless of his prior convictions. Under the Commission's recommendation this particular offender would be required to serve twenty-eight months before becoming eligible for a furlough.

5d. *Inmates with a from and after sentence must be serving the time required on their second sentence before they are eligible for the furlough program.*

This particular offender has because of additional crimes been sentenced by the courts to serve not one but two distinct sentences, the second to be served only upon completion of the first. The courts have given a from and after

sentence for the sole reason of keeping this offender incarcerated for a longer period of time.

Parole for this offender is a difficult process that allows him to be paroled only from serving his first sentence to begin serving the time required on his second sentence. In effect this offender must be paroled twice before he is able to leave prison.

All regulations to date have not specifically restricted these offenders.

It is the belief of this Commission that the furlough program should be consistent with the action of the courts and the laws governing the parole of these offenders.

5e. *Inmates serving a sentence for first degree murder are not to be eligible for participation in the furlough program.*

In order to be consistent with laws already on the books, these offenders must be ineligible.

Under Massachusetts General Laws Chapter 265, Section 2, conviction for murder in the first degree was to be punished by death, until the Supreme Court decision, unless the jury in its verdict recommended life imprisonment.

Even now there is no parole eligibility specified under law, Massachusetts General Laws Chapter 127, Section 133A or Chapter 265, Section 2, for a sentence for murder in the first degree.

At present the Department of Correction operates three forestry camps. "The camps are open institutions with no walls or security barriers and escape therefrom is not difficult."[1] Under Massachusetts General Laws Chapter 127, Section 83B, "The Commissioner may remove to any camp so established any prisoner – except a prisoner serving a life sentence for first degree murder."

According to the Department of Correction's second report on "The Massachusetts Furlough Experience" there have been sixty-seven first degree murderers given furloughs. Seven have been escapees, for a failure rate of over 10%.

Present regulations from Commissioner Hall allow this offender to be eligible for a furlough after being incarcerated for five years.

[1] *The Basic Structure of the Administration of Criminal Justice in Massachusetts*, prepared by Edwin Powers (p. 219).

Previously former Commissioner Boone had required only ninety days of incarceration before this offender would be eligible for this program.

Based on these existing situations, the Commission has made the previous recommendation.

The prisoner would be eligible for the furlough program if his life sentence was commuted by the Governor.

5f. *Offenders receiving a life sentence for second degree murder or other crimes shall be eligible to apply for a furlough after twelve (12) years of their sentence.*

Under Massachusetts General Laws Chapter 127, Section 133A, these offenders are eligible for parole after serving fifteen (15) years of their sentence.

They are restricted from being eligible for the Department of Correction's forestry camps by Massachusetts General Laws Chapter 127, Section 83B, until they have served twelve years of their sentence.

Present regulations from Commissioner Hall allow this offender to be eligible for a furlough after being incarcerated for three years. Previously former Commissioner Boone had required only ninety days of incarceration before this offender would be eligible for this program.

It is the belief of this Commission that the furlough program should be consistent with existing laws.

The prisoner would be eligible under other recommendations if the offender's life sentence were to be commuted by the Governor.

5g. *An offender sentenced or committed to any facility or institution pursuant to Massachusetts General Laws Chapter 123A shall not be eligible for a furlough until that offender has received clearance as a sexually dangerous person.*

Under Section One of Chapter 123A, the words sexually dangerous have the following meaning: "Any person whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive behavior and either violence, or aggression by an adult against a victim under the age of sixteen years, and who as a result is likely to attack or otherwise inflict injury on the objects of his uncontrolled or uncontrollable desires."

Section 6 of Chapter 123A states that "If the courts find that such a prisoner is a sexually dangerous person, they shall commit him to the center, or a branch thereof, for an indeterminate period of a minimum of one day and a maximum of such person's natural life, for the purpose of treatment and rehabilitation, or it may commit such person to a mental institution or place him upon outpatient treatment."

It is upon a finding by the court that such person is no longer a sexually dangerous person that it shall order such person to be discharged or conditionally released from the center (Section 9, Chapter 123A).

To date, both commissioners have declared offenders of this section to be ineligible until they have received clearance as a sexually dangerous person.

The Commission's recommendation is that this restriction be written into the law.

5h. *A committed offender may apply for emergency furloughs under escort immediately following commitment for reasons (a), (b), (c), as stated in Section 90A of Chapter 127.*

Prior to the establishment of the furlough program, inmates were allowed to attend the funeral of a relative or to visit a critically ill relative.

Since the passage of Chapter 777 of the Acts of 1972, the commissioners of the Department of Correction have promulgated regulations that would allow emergency furloughs under escort to be granted to offenders not otherwise eligible for a furlough for any of the six reasons for which a furlough may be granted.

The Commission recommends that furloughs of this nature be granted only to allow an inmate: (a) to attend the funeral of a relative, (b) to visit a critically ill relative, or (c) to obtain medical, psychiatric, psychological or other social services when adequate services are not available at the facility and cannot be obtained by temporary placement in a hospital under Sections 117, 117A and 118 of Chapter 127.

6. *That a judge, upon sentencing of a prisoner, may impose further restrictions than those provided for by existing laws or regulations for furlough eligibility.*

It is the committing justice who, after becoming acquainted with both the offender and his crime, decided how long the

individual should be separated from society.

It is the firm belief of the Commission that this justice should, if he chooses, have input into a decision that will again put an offender on the streets before the full sentence has been served and in most cases even before the inmate has served enough time to be eligible for parole.

EXHIBIT 1

Chapter 127, Section 90A. Temporary release of committed offenders; authorization; purposes; expenses.

The commissioner may extend the limits of the place of confinement of a committed offender at any state correctional facility by authorizing such a committed offender under prescribed conditions to be away from such correctional facility but within the commonwealth for a specified period of time, not to exceed fourteen days during any twelve month period nor more than seven days at any one time; provided that no committed offender who is serving a life sentence or a sentence in a state correctional facility for violation of section 13, 13B, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 22, 22A, 23, 24, 24B, 25, or 26 of Chapter 265, or Section 17, 34, 35, or 35A, of Chapter 272, or for an attempt to commit any crime referred to in said sections shall be eligible for temporary release under the provisions of this section except on the recommendation of the superintendent on behalf of a particular committed offender and upon the approval of the commissioner. The administrator of a county correctional facility may grant like authorization to a committed offender in such facility. Such authorization may be granted for any of the following purposes: (a) to attend the funeral of a relative; (b) to visit a critically ill relative; (c) to obtain medical, psychiatric, psychological or other social services when adequate services are not available at the facility and cannot be obtained by temporary placement in a hospital under sections one hundred and seventeen, one hundred and seventeen A, and one hundred and eighteen; (d) to contact prospective employers; (e) to secure a suitable residence for use upon release on parole or discharge; (f) for any other reason consistent with the reintegration of a committed offender into the community. For the purposes of this section the word "relative" shall mean the committed offender's father, mother, child, brother, sister, husband or wife and, if his

grandparent, uncle, aunt, or foster parent in rearing such committed offender, it shall also mean such grandparent, uncle, aunt or foster parent.

A person away from a correctional facility pursuant to this section may be accompanied by an employee of the department, in the discretion of the commissioner, or an officer of a county correctional facility, in the discretion of the administrator.

Any expenses incurred under the provisions of this section may be paid by the correction facility in which the committed offender is committed. A committed offender shall, during his absence from a correctional facility under this section, be considered as in the custody of the correctional facility and the time of such absence shall be considered as part of the term of sentence.

Amended by St. 1938, c. 65; St. 1951, c. 394; St. 1952, c. 299; St. 1970, c. 460; St. 1972, c. 777, §18.

EXHIBIT 2

NUMBER OF INDIVIDUALS FURLOUGHED MONTHLY IN 1974 IN PROPORTION TO TOTAL POPULATION BY INSTITUTIONAL SECURITY LEVEL

Maximum Security	*Average Daily Population*	*Average Number of Individuals Furloughed Per Month*	*Proportion To Population*
MCI Walpole	488	24	4.9
MCI Concord	408	69	16.9
MCI Bridgewater	135	22	16.3
Reception Diagnostic Center	19	1	5.3
Medium Security			
MCI Norfolk	668	113	16.9
State Community Correctional Facility			
Boston State Pre-Release Center	54	49	90.7
Shirley Pre-Release	47	31	66.0
MCI Framingham	126	52	41.3
MCI Warwick	33	18	54.5
MCI Monroe	37	18	48.6
MCI Plymouth	46	28	60.9
Private Contract Facility			
Charlotte House	7	5	71.4
Brooke House	8	10	100.0*
Coolidge House	11	13	100.0*
Roxbury Multi-Service Center	17	7	41.2
Total	2,104	460	21.9

*The greater number of individuals furloughed than average number of residents at Brooke House and Coolidge House is a result of the high turnover rate at these facilities.

EXHIBIT 3
NUMBER OF FURLOUGHS AND ESCAPES SINCE THE INCEPTION OF THE PROGRAM TO JULY OF 1975

Massachusetts Correctional Facility	*No. of Furloughs Granted*	*Total No. of Residents Declared Escapees*	*Overall Furlough Escape Rate*	*No. Declared Escape, but returned voluntarily within 24 hours*	*No. Declared Escaped but did not return voluntarily within in 24 hours*	*Furlough Escape Rate (excluding voluntarily returns within 24 hrs.)*	*No. of Escapees At Lge. on 7/26/75*
Bridgewater	676	20	3.0	2	18	2.7	1
Concord	2,843	104	3.7	34	70	2.5	10
Framingham	1,777	19	1.1	9	10	.6	5
Norfolk	4,381	81	1.9	2	79	1.8	29
Walpole	607	12	2.0	1	11		5
Shirley Pre-Release	1,595	21	1.3	14	7	.4	0
Boston Pre-Release	4,434	18	.4	11	7	.2	0
Charlotte House	188	2	1.1	2	0	0.0	0
Rox. Comm. Rehab. Ctr.	279	0	0.0	0	0	0.0	0
Monroe	845	14	1.7	4	10	1.2	1
Plymouth	1,190	15	1.3	5	10	.8	1
Warwick	671	11	1.6	3	8	1.2	2
Brooke Hse.	735	1	.1	0	1	.1	0
Coolidge Hse.	723	0	0.0	0	0	0.0	0
RDC	3	0	0.0	0	0	0.0	0
Temp. Housing	1	0	0.0	0	0	0.0	0
699 House	4	0	0.0	0	0	0.0	0
Total	20,952	318	1.5	87	231	1.1	54

EXHIBIT 4

The Department of Corrections has not updated these tables since May of 1974, despite the Commission's repeated requests.

The Commission's files indicate that additional offenses have occurred.

TABLE 6

OFFENSES ALLEGEDLY COMMITTED BY FURLOUGHEES ON ESCAPE

Offenses Against the Person	*N*	*%*
Murder, 1st Degree Pending	1	(4.3)
Armed Robbery	13	(56.6)
Armed Dangerous Weapon w/Intent to Rob 15 cc	1	(4.3)
Assault w/Intent to Murder	1	(4.3)
Assault w/Intent to Rob 8-10	1	(4.3)
Kidnapping	1	(4.3)
Other Offenses		
Unlawful Possession Weapon	2	(8.7)
Larceny 6 mos. F&A, ss 2 yr. prob.	1	(4.3)
Possession Marijuana 2½ yr.	1	(4.3)
Operating w/o Authority 6 mos. F&A H. of C.	1	(4.3)
Total	23	(100.0)

Of these twenty-three cases, twelve have resulted in convictions and new sentences. A list of the new sentences is given in Table 6A. An additional four individuals are presently serving time in other states and the remaining seven cases have not yet been adjudicated.

TABLE 6A.

SENTENCES RECEIVED BY OFFENDERS CONVICTED OF CRIMES COMMITTED WHILE ON ESCAPE FROM FURLOUGHS

Offense	*Sentence*	
Armed Robbery	20-25 yrs., Forthwith	1
Armed Robbery	12 yrs., cc	1
Armed Robbery	6-9 yrs., cc	1
Armed Robbery	5-20 yrs., F&A	1
Armed Robbery	5-7 yrs., cc	1
Armed Robbery	2½-5 yrs., cc	2
Armed Dang. Weapon w/Intent to Rob	15 yrs., cc	1
Assault Int. Rob	8-10 yrs., cc	1
Larceny	6 mos. F&A, ss 2 yr. prob.	1
Possession Marijuana	2½ yrs., cc	1
Oper. w/o Authority	6 mos. F&A, H of C.	1
	Total	12

EXHIBIT 5

LEGAL OUTCOME OF ESCAPE FROM FURLOUGH CASES NOVEMBER 6, 1972 THROUGH JUNE 28, 1975

Disposition	*No.*	*%*
Not Prosecuted	120	38.6
Not Guilty	3	1.0
Probation	33	10.6
New Sentence, Concurrent	20	6.4
New Sentence, From and After	43	13.8
New Sentence, Forthwith	2	.6
Sentence Suspended	3	1.0
Case Pending	20	6.4
In Custody, Out-of-State Facilities	10	3.2
Resident Deceased	1	.3
At Large	52	16.7
Disposition Unknown	4	1.3
Total	311	100.0

LENGTH OF FROM/AFTER SENTENCE FOR FURLOUGH ESCAPE

Length	*Number Of Escapees*
Ten days	1
One month	6
Two months	1
Three months	21
Four months	4
Five months	1
Six months	6
One year and one day	2
One year to a year and a half	1
Total	43

EXHIBIT 6

COMMISSIONER HALL'S FURLOUGH ELIGIBILITY TIME SCHEDULE

Minimum Sentence (Years)	*(Months)*	*Time To P.E.* Date (1/3 Offender) Months*	*Time To F.E.** Date (1/3 Offender) Months 1/10 equals 3 days*	*Time To P.E.* Date (2/3 Offender) Months*	*Time To F.E.** Date (2/3 Offender) Months 1/10 equals 3 days*
1	12	4	0	0	1.6
2	24	8	0	0	3.2
3	24	12	0	24	4.8
4	48	16	0	32	6.4
5	60	20	4.0	40	8.0
6	72	24	4.8	48	9.6
7	84	28	5.6	56	11.2
8	96	32	6.4	64	12.8
9	108	36	7.2	72	14.4
10	120	40	8.0	80	16.0
11	132	44	8.8	88	17.6
12	144	48	9.6	96	19.2
13	156	52	10.4	104	20.8
14	168	56	11.2	112	22.4
15	180	60	12.0	120	24.0
16	192	64	12.8	128	25.6
17	204	68	13.6	136	27.2
18	216	72	14.4	144	28.8
19	228	76	15.2	152	30.4
20	240	80	16.0	160	32.0
21	252	84	16.8	168	33.6
22	264	88	17.6	176	35.2
23	276	92	18.4	184	36
24	288	96	19.2	192	36
25	300	100	20.0	200	36
26	312	104	20.8	208	36
27	324	108	21.6	216	36
28	336	112	22.4	224	36
29	348	116	23.2	232	36
30	360	120	24.0	240	36

*P.E.–Parole Eligibility

**F.E.–Furlough Eligibility (20% of time from effective date of sentence until P.E.)

EXHIBIT 7

PAROLE ELIGIBILITY

Upon conviction, a prisoner is sentenced to either the state prison, the state correctional institution or a house of correction. Parole eligibility for prisoners is governed by Massachusetts General Laws Chapter 127, Section 133 and by Rules of the Parole Board. In short these provisions state:

M.C.I. Walpole – parole eligibility

⅓ of *minimum* sentence for less serious, non-violent crimes
⅔ of *minimum* sentence for violent crimes

M.C.I. Concord

a. On cases committed on a misdemeanor or felony for a term of less than six years:

   eligible for parole in six months if you have no prior commitments to a penal institution;
   eligible in one year if you have any prior commitments.
b. On cases committed for a term of six years or more, and less than twelve years:
   one year if no prior commitments;
   eighteen months if any prior commitments.
c. On cases committed for a term of twelve years or more, and less than eighteen years:
   eighteen months if no prior commitments;
   two years if any prior commitments
d. On cases committed for a term of eighteen years or more:
   two years if no prior commitments;
   thirty months if any prior commitments.

House of Correction

½ the sentence or 2 years, whichever is shorter.

We, the minority of the members of the Special Commission formed by the Legislature to Study the Effects of the Prisoner Furlough Program on the Citizens of this Commonwealth, believe that the Legislature should accept this minority report as a substitute for the recommendations contained in the interim report of the majority.

Robert A. Thomas
Jonathan L. Healy

Dated: October 27, 1975

MINORITY REPORT OF THE SPECIAL COMMISSION RELATIVE TO THE EFFECT OF THE PRISON FURLOUGH PROGRAM ON THE CITIZENS OF THE COMMONWEALTH

This document is a minority report of the Special Commission Relative to the Effect of the Prisoner Furlough Program on the Citizens of the Commonwealth. This minority report was prepared because of a concern that the conclusions and recommendations of the majority report were not based on a balanced consideration of the facts regarding the operation of the furlough program, nor were they consistent with the commitment to community based correctional programs mandated by the Great and General Court in its passage of the Correctional Reform Act of 1972.

It should be emphasized that in this minority report we are concerned with the relationship between the furlough program and public safety. In fact, we believe that any correctional program must have as an overriding objective the protection of society. However, it is our position that the correctional system will, ultimately, be successful in protecting society to the extent that it can effectively reintegrate offenders back into a crime-free life in the community. The reintegration of the offender is particularly important inasmuch as 98% of those sentenced to the state correctional system will eventually return to the community, and, in fact, about 85% of them will return to the community within three years of the date of their sentence.

Therefore, it is not a question of *whether* the vast majority of sentenced offenders will return to the community. Rather, the question is *how* will they return. The challenge to the correctional system, then, is how can it best prepare an offender to return to community life, and, accordingly, afford the best protection to society.

It is our opinion that the furlough program is an important tool which correctional administrators can utilize to help effect the successful reintegration of offenders. The furlough program provides for the opportunity for selected offenders to maintain family ties during the period of their incarceration. It also allows for offenders to establish or maintain relationships with other persons or agencies in the community that could facilitate their

successful return to society. We consider it important that these kinds of contact with families and others *not* be limited to the final few months of incarceration. We believe that it is necessary for the Department of Correction to have the administrative flexibility to determine when is the appropriate time for an individual offender to be considered for a furlough (within the framework of the existing statute and the DOC rules and regulations governing furloughs) and that furlough eligibility should not be arbitrarily dictated by very specific statutory criteria as proposed in the majority report.

One reason why we are opposed to the fairly stringent statutory criteria for furlough eligibility, proposed in the majority report, is that we consider the furlough program to have been a successful enterprise under the existing statute and the present DOC rules and regulations. Through August, 1975, there have been 21,802 furloughs granted, and in 326 cases, individuals have been declared furlough escapees. This represents an escape rate of 1.5% and a successful rate of 98.5%. Further, 92 of the 326 individuals who were declared escapees returned voluntarily to their correctional facilities within 24 hours of the time they were due back. If these 92 individuals were deducted from the 326 escapes, the escape rate would be only 1.1% and the success rate would be 98.9%.

We consider these figures to be impressive. They compare favorably with statistics on furlough programs in other jurisdictions. In our view they provide solid support for continuing the furlough program under the existing statute and DOC regulations.

There is also evidence that there have been improvements in the administration of the furlough program. For example, in 1973, the escape rate was *1.8%*; in 1974, it was *1.5%*; and, through August, 1975, it was 1.1%. Thus, as the DOC has gained more experience in administering the furlough program, it has been able to reduce the escape rate without curtailing the number of furloughs granted.

We have also noted that furloughs have not been granted indiscriminately, and that the number and percentage of furloughs granted in any given month is related to the security level of the correctional facility. For example, in August, 1975, 6% of the inmates at Walpole (maximum security) received furloughs;

14% of the inmates at Norfolk (medium security) received furloughs; and, 69% of the inmates at the Roxbury Community Rehabilitation Center (halfway house) received furloughs.

Based upon the above statistics, we have reached the conclusion that it would not be advisable to make changes in the existing furlough statute at this time. We believe that the DOC has demonstrated the capability to administer the furlough program in a responsible fashion under the existing statute. We are confident that the revised furlough rules and regulations recently promulgated by the DOC, which have the force of administrative law, are more than adequate to ensure the responsible administration of the furlough program.

Therefore, after a careful review of the operation of the furlough program, we recommend that this program continue to operate under the existing statute and the present DOC rules and regulations governing furloughs.

HARVARD LAW SCHOOL
CAMBRIDGE, MASS.
27 October 1975

DISSENTING STATEMENT OF PROFESSOR LLOYD L. WEINREB:

I do not agree with most of the report and recommendations of the Special Commission.

The report and recommendations seem to me to continue and confirm the basic error of the furlough program in the past. Substantially all of its emphasis (the only significant exception being Recommendation 3) is on the need to prevent harm to the community by a prisoner on furlough or an escape. While those are of course major considerations, the Commission's preoccupation with them has led it to disregard the affirmative aspect of a furlough program: What it is for and how it can be made to accomplish its purpose better. The Commission's conclusions, therefore, simply continue, albeit under more strict guidelines, the prior practice of giving exclusive consideration to the risk of a particular prisoner's furlough without any attention to what a carefully planned furlough might help him to achieve.*

Although the furlough program is intended to help a prisoner prepare for release into the community, in the past virtually no attention was given to that objective. Perhaps for compassionate reasons but more likely as a routine way to obtain prisoners' good behavior within an institution, furloughs have been granted without any serious attention to the prisoner's plans. More important, no effort has been made to help a prisoner plan for a furlough, whether his intention is to look for a job, be with his family, or simply have a good time. (In those circumstances, it is scarcely surprising that the Commission is unable to tell whether the program has given us benefits that merit its continuation, as the Commission's report states.)

* I agree with the basic premise of the minority report that the furlough program should be considered as an affirmative effort to protect society and not simply as an amelioration of imprisonment. But after stating that premise, the minority, like the majority, considers the "success" of the program only in terms of the escape rate.

Any program that makes our prisons more decent institutions without endangering the public should be approved. If in addition a program promises to reduce the enormous cost of imprisonment as punishment for crime it deserves strong support. Both of those goals can be served by a carefully conducted furlough program. We should not disregard, as the Commission's report does, that furloughs are intended not only to serve the prisoners but to serve the community also, by allowing us to release a prisoner sooner and increasing the probability that he will not have to be imprisoned again later.

As the program has worked in the past and, I fear, will work if the Commission's recommendations are adopted, any benefits to the whole community are speculative. The prisoner is encouraged to believe that his furlough is related only to his behavior in prison. If he conforms to the prison's regulations and does not antagonize the administration or guards, he will receive a furlough; otherwise he will not. The furlough program thus becomes one more counter in the elaborate process of preserving order within a prison, instead of a step back into the community. None of the social services that might make a furlough useful preparation for release is provided for in the Commission's proposal or even mentioned in its report. I do not suggest that furloughs be turned into another form of custody, prisoners being released only into the charge of one social service or another; but surely there ought to be some serious effort to help the prisoner look ahead to his release. It is symptomatic of the Commission's disregard of this aspect of a furlough that it emphasizes how much time a prisoner has served before he should be furloughed rather than how much time he has still to serve.

Aside from my general disagreement with the Commission's approach to our assignment, I have these more particular objections to some of its recommendations:

Recommendation 1. I do not believe that correction officers should sit on a furlough committee. What they know "best" about a prisoner is his overt behavior in prison, not his plans for or readiness for release. The presence of correctional officers on the committee can only increase the use of the furlough program as part of the informal mechanism of control within a prison. Instead of correctional officers, members of the prison's

therapeutic and professional staff should sit on the committee.

Recommendation 2. A mandatory sentence of not less than three years' imprisonment (as well as forfeiture of earned good-time deductions) for a failure to return from furlough within six hours after it expires is abusively punitive. I doubt that it will often be imposed except in extreme cases. Given the extremity of the penalty for what may be a rather small, unintended lapse of responsibility, release on furlough would become a substantial risk for the prisoner himself.

Recommendation 4. Notification must be given to far too many people, most of whom will regard it as a useless formality. In my view, the Commission has the matter backwards. Where officials may have information relevant to the furlough (as when the police may know something about a prisoner's associates) they should be consulted before the furlough is granted. Once it is granted, except in special cases where the official is expected to take some action, no notice should be given.

Recommendation 5. While I do not disagree with the legislative imposition of general restrictions on eligibility for furlough, the particular restrictions that the Commission recommends are entirely arbitrary. There is nothing to suggest that they are rationally related to the purposes of furloughs or even to the risk of releasing various categories of prisoners on furlough.

Recommendation 6. I do not believe that the judge who imposes sentence should have any control over a prisoner's eligibility for furlough. To allow him such control merely emphasizes the *punitive* possibilities of a furlough program.

I believe that further study of the furlough program is necessary, to these particular ends:

1) We need to know what conditions of furlough and what assistance available to the furloughed prisoner will make it most useful as a step toward permanent release.

2) We need to devise ways to provide appropriate assistance without eliminating too much the element of freedom that is part of the concept of furlough.

3) We need to prevent the furlough program from becoming another source of power of prison officials, which is used primarily to preserve order in prison.

4) We need the most careful and thorough, continuing statistical analysis of the furlough program, in order to develop

information about when furloughs are most successful, when they involve least danger to the community, and when they involve least likelihood of escape.

I recommend that the objectives of the furlough program as described above be stated clearly, that the furlough program be carefully reinstituted and supervised consistently with those objectives, that it be studied in operation to give us the knowledge we need, and that it be revised accordingly as our knowledge increases.

Lloyd L. Weinreb
Harvard Law School
Cambridge, Massachusetts

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT FURTHER DEFINING THE PRISON FURLOUGH PROGRAM FOR INMATES IN CORRECTIONAL INSTITUTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Said chapter 127 of the General Laws is hereby further amended by striking out section 90A, as most recently amended by section 18 of chapter 777 of the acts of 1972, and inserting in place thereof the following section:—

Section 90A. The commissioner of corrections subject to the requirements of this act and rules and regulations that may be established in accordance with the provisions of chapter 777 of the acts of 1972, and provided that no judge has stipulated otherwise, may extend the limits of the place of confinement of a responsible and deserving committed offender at any state correctional facility by authorizing such committed offender under prescribed conditions to be away from such correctional facility, but within the Commonwealth, for a specified period of time, not to exceed fourteen days during any twelve month period nor more than seven days at any one time, provided that no committed offender who is serving a life sentence, with the exception of a committed offender who is serving a life sentence for conviction of first-degree murder, or a sentence in a state correctional facility for violation of sections thirteen, thirteen B, fourteen, fifteen, fifteen A, fifteen B, sixteen, seventeen, eighteen, eighteen A, nineteen, twenty, twenty-one, twenty-two, twenty-two A, twenty-three, twenty-four, twenty-four B, twenty-five or twenty-six of chapter two hundred and sixty-five, or sections seventeen, thirty-four, thirty-five or thirty-five A of chapter two hundred and seventy-two or for violations relative to controlled substances in class A, class B, class C, as specified in section thirty-two of chapter ninety-four C, or for an attempt to commit any crime referred to in said sections shall be eligible for temporary release under the provisions

of this section except when such committed offender has served that portion of his sentence required by this act and on the recommendation of the superintendent on behalf of a particular committed offender and upon the approval of the commissioner. The administrator of a county correctional facility may grant like authorization to a committed offender in such facility.

Such authorization may be granted for any of the following purposes: (a) to attend the funeral of a relative; (b) to visit a critically ill relative; (c) to obtain medical, psychiatric, psychological or other social services when adequate services are not available at the facility and cannot be obtained by temporary placement in a hospital under sections one hundred and seventeen, one hundred and seventeen A and one hundred and eighteen; (d) to contact prospective employers; (e) to secure a suitable residence for use upon release on parole or discharge; (f) for any other reason consistent with the reintegration of a committed offender into the community; provided, however, that no such authorization shall be granted under the above provisions unless the person granting the authorization shall send by first-class mail copies of said authorization to the chief justice of the superior court or the committing justice, the criminal division of the attorney general's office, the secretary of public safety, the superintendent of the police division of the metropolitan district commission, the district attorney of the county where the prisoner's offense occurred and the chief of police of the city or town which the prisoner shall designate as his destination and of the city or town in which the furloughed prisoner's offense occurred. Said copies shall be sent at least fourteen days prior to the furlough. If the committing justice or the district attorney of the county where the prisoner's offense occurred, either acting on their own initiative or on the request of another, objects to the furlough of any prisoner he shall so specify in writing to the person granting the authorization and request an immediate meeting with the commissioner or with his designate on the merits. If no objection is raised on or prior to five days before the first day of the furlough, the authorization shall take effect on

said day. If the commissioner of correction, superintendent of a facility, or the administrator of a county facility receives an objection from any person allowed to object under the provisions of this section, the offender shall not be released until after a meeting at which the party objecting to such furlough shall state the reasons why a furlough should not be granted. If after the meeting said objection is not removed, no furlough shall be granted. For the purposes of this section, the word "relative" shall mean the committed offender's father, mother, child, brother, sister, husband or wife and if his grandparent, uncle, aunt or foster parent acted as his parent in rearing such committed offender, it shall also mean such grandparent, uncle, aunt or foster parent.

Before any inmate may be considered for participation in this program, said inmate shall first demonstrate that he is responsible and deserving of this opportunity.

It shall be required that an inmate requesting a furlough shall be an active, regular participant on a work assignment from the superintendent or in a program approved by the commissioner or the administrator of a county correctional facility.

The commissioner shall establish in each state correctional facility a furlough committee. Said committee shall take the form of five correctional staff members, appointed by the superintendent of that facility, at least two of whom shall be correctional officers, who shall recommend to the superintendent and commissioner action of approval, rejection or deferral of a furlough application.

No inmate of a state or county correctional facility may apply for or participate in a furlough program until qualified under the time eligibility provisions of this section.

Committed offenders, with no prior commitments to a correctional institution or house of correction, of less serious, non-violent crimes; that is, any violation for which if held under a sentence containing a minimum sentence, the offender would be eligible to receive a parole after serving one-third of that minimum sentence, shall be required to serve twenty percent of the time required to be eligible for parole before becoming eligible to apply or receive a

furlough.

Committed offenders, with no prior commitment to a correctional institution or house of correction, of serious, violent crimes, violations of sections thirteen, thirteen B, fourteen, fifteen, fifteen A, fifteen B, sixteen, seventeen, eighteen, eighteen A, nineteen, twenty, twenty-one, twenty-two, twenty-two A, twenty-three, twenty-four, twenty-five, or twenty-six of chapter two hundred and sixty-five or sections seventeen, thirty-four, thirty-five, or thirty-five A of chapter two hundred and seventy-two, and for violations relative to controlled substances in class A, class B, class C, as specified in section thirty-two of chapter ninety-four C, or any violation for which if held under a sentence containing a minimum sentence the offender would be eligible to receive parole after serving two-thirds of that minimum sentence, shall be required to serve fifty percent of the time required to be eligible for a parole before becoming eligible to apply or receive a furlough.

Repeat offenders, those with a prior commitment to a correctional institution or house of correction, must be within four months of the time required to be eligible for parole before becoming eligible to apply or receive a furlough.

Committed offenders with a from and after sentence must be serving the time required on their second sentence before they are eligible for participation in a furlough program and in compliance with all other provisions of this section.

Committed offenders serving a life sentence for first-degree murder are not eligible for participation in a furlough program. The inmate would become eligible if the life sentence were to be commuted by the governor and upon compliance with all other provisions of this section.

Committed offenders serving a life sentence for second-degree murder of other crimes shall be eligible to apply for or to receive a furlough only upon serving twelve years of their life sentence. The inmate would become eligible if the life sentence were to be commuted by the governor and upon compliance with all other provisions of this section.

An offender sentenced or committed to any facility or

institution pursuant to chapter one hundred and twenty-three A shall not be eligible for a furlough until that offender has received a clearance as a sexually dangerous person.

A committed offender may apply for an emergency furlough, under escort only, immediately following commitment: (a) to attend the funeral of a relative; (b) to visit a critically ill relative; or (c) to obtain medical, psychiatric, psychological or other social services when adequate services are not available at the facility and cannot be obtained by temporary placement in a hospital under sections one hundred and seventeen, one hundred and seventeen A and one hundred and eighteen of chapter one hundred and twenty-seven.

An inmate who is eligible for a furlough under all requirements of this act, may apply for and receive an emergency furlough for those reasons expressly stated in clauses (a) or (b) of this section, provided that notice is given by telephone to the chief of police in the city or town which the inmate designates as his destination.

If any inmate participating in a furlough program under the provisions of this section fails to return to the state or county correctional facility at his designated time, it shall automatically result in the filing of a disciplinary report for being out of place, regardless of prior notification to the facility by the inmate of his reasons for being late. Current departmental procedures for processing disciplinary reports shall be followed.

If any inmate participating in a furlough program under the provisions of this section fails to return to the state or county correctional facility within two hours of his designated time of return, he shall be considered an escapee regardless of prior notification to the facility by the inmate of his reasons for being late. The superintendent or his designee shall notify, forthwith, appropriate law enforcement officials of the escape. The escapee shall be subject to all disciplinary action of the department of correction and judicial action pursuant to section sixteen of chapter two hundred and sixty-eight.

If any inmate participating in a furlough program under

the provisions of this section fails to return to the state or county correctional facility, or in an emergency any other official law enforcement body, within six hours of his designated time of return, he shall upon conviction of escape be sentenced to a from and after sentence at a state correctional facility for a term of not less than three years and not more than ten years and all deductions from the sentence or sentences he was serving at the time of such escape, authorized by section one hundred and twenty-nine of chapter one hundred and twenty-seven, shall be forfeited, but said inmate shall be entitled to a deduction of sentence on any sentence imposed for said escape.

A person away from a correctional facility pursuant to this section may be accompanied by an employee of the department, in the discretion of the commissioner, or an officer of a county correctional facility, in the discretion of the administrator.

Any expenses incurred under the provisions of this section may be paid by the correctional facility in which the committed offender is committed. A committed offender shall, during his absence from a correctional facility under this section, be considered as in the custody of the correctional facility and the time of such absence shall be considered as part of the term of sentence.